

\*\*\* IMPORTANT \*\*\*

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THE SOFTWARE

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## 1. Definitions.

The following capitalized terms used in this Agreement shall have the meanings set forth below:

**1.1 "Confidential Information"** shall mean all written or oral information, disclosed by RapidMiner to Licensee, related to the operations of either RapidMiner or any third party, that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be understood to be proprietary and/or confidential. Without limiting the generality of the foregoing, RapidMiner hereby designates the Software, the Deliverables, and any algorithms, mathematical models, business plans, product plans, financial data or other ideas, techniques or information disclosed in the course of providing the Software or the Services as Confidential Information.

**1.2 "Deliverable"** shall mean any invention, work of authorship, information or other work product, other than the Software, that is provided to Licensee by RapidMiner in the course of performing Services.

**1.3 "Documentation"** means RapidMiner's then-current manuals, guides, and online help pages, if any, applicable to

the Software and made generally available by RapidMiner to its customers at <http://docs.rapidminer.com/>.

**1.4 "Effective Date"** shall mean the date upon which the Licensee clicks through or otherwise accepts this Agreement.

**1.5 "Extension"** means a dynamically-loaded software component that serves to extend the capabilities of the Software. Extensions may be used to create new operators, templates, tutorials, UI components, connection types, or otherwise extend or enhance the existing functionality of the Software.

**1.6 "Field of Use"** shall mean any geographic, subject matter, or other field-of-use limitation established by the Usage Policy or the applicable Order.

**1.7 "License Key"** means any unique form of enabling code issued by RapidMiner for activation of the Software.

**1.8 "License Term"** means the duration of the license for the Software, as set forth in the applicable Order.

**1.9 "Order"** means the final configuration details for the Software licensed by Licensee. The Order can be represented by a physical order form, executed by both parties, that references this Agreement, or the Order can be represented by the online procurement and/or registration process completed by Licensee. In general, the Order will capture the specific configuration of the Software, the Field of Use, and any other relevant information relating to the Software.

**1.10 "RM Extension"** means an Extension that is developed and made generally available by RapidMiner.

**1.11 "Services"** may comprise consulting, training, Support and any other professional services provided to Licensee by RapidMiner.

**1.12 "Software"** shall mean the software set forth on the applicable Order. Software shall also include the Documentation, any applicable RM Extensions, and any updates or upgrades to the Software provided to Licensee by RapidMiner.

**1.13 "Support"** means any technical support that RapidMiner makes generally available to users of the Software, as outlined in RapidMiner's then-current Support Policy, available at <http://rapidminer.com/support-policy>.

**1.14 "Third Party Extension"** means an Extension that is developed by either the Licensee or a third party.

**1.15 "Usage Policy"** shall mean RapidMiner's then-current Product Configuration & Usage Policy, available at <http://rapidminer.com/product-configuration-usage-policy>.

## 2. Limited License.

**2.1 License Grant.** Subject to the terms and conditions of this Agreement, RapidMiner hereby grants to Licensee, during the applicable License Term, a non-exclusive, non-

transferable, non-sublicensable right and license to (a) execute the Software within the Field of Use, solely for Licensee's internal use and (b) make a reasonable number of copies of the Software solely for non-productive, archival purposes.

**2.2 Limited License for Extensions.** Notwithstanding the prohibition on derivative works set forth in Section 2.3(iii) below, RapidMiner hereby grants to Licensee, during the applicable License Term and within the applicable Field of Use, a non-exclusive, non-transferable, non-sublicensable right and license to combine Extensions with the Software, provided that in no event may an Extension be used to convert the client version of the Software into a server-based application, remove or hide existing UI components of the Software, modify any RapidMiner branding of the Software, or otherwise re-purpose the Software for a usage pattern other than it was intended for.

**2.3 Restrictions.** The Software shall not be used for any purpose other than as expressly authorized by this Agreement. In particular, but without limitation, Licensee shall not, nor permit any third party to: (i) assign, sublicense, market, sell, lease, rent, distribute, convey or otherwise transfer or make the Software available to, or use the Software on behalf of, any third party; (ii) adapt, alter, modify, or translate the Software; (iii) create derivative works of the Software; (iv) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Software for any purpose; (v) pledge as security or otherwise encumber the rights and licenses granted hereunder with respect to the Software; (vi) use the Software in any service bureau, time sharing, rental, or application service provider arrangement, as such terms are ordinarily understood within the software industry, or otherwise provide access to the Software to third parties; (vii) use the Software in any manner not in compliance with all applicable laws, regulations, and rules; (viii) use the Software, or cause the Software to be used, on any device not owned, operated, or controlled by Licensee; (ix) tamper with or modify any License Key, or otherwise attempt to use the Software outside of its prescribed Field of Use; (x) disclose benchmark results, competitive analyses, or any other information regarding the performance, design, functionality or features of the Software; or (xi) develop any product or service that competes with the Software or with RapidMiner.

**2.4 Reservation of Rights.** Nothing in this Agreement shall be deemed to grant Licensee, either directly or by implication, estoppel, or otherwise, any license or rights other than those expressly granted in Sections 2.1 and 2.2 of this Agreement. By virtue of this Agreement, Licensee acquires only the right to use the Software and does not acquire any other rights or ownership interests. RapidMiner reserves all rights to the Software not expressly granted to Licensee under this Agreement. RapidMiner shall retain all right, title, and interest in and to the Software, the Services,

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**2.5 Deliverables.** Unless the applicable Order expressly provides otherwise, Licensee shall have a non-exclusive, non-transferable, non-sublicensable license to use each Deliverable solely for purposes appurtenant to, and within the scope of, the license granted to Licensee under Sections 2.1 and 2.2 of this Agreement. RapidMiner shall retain all other right, title and interest in and to all Deliverables.

### **3. Support and Services.**

**3.1 Support.** Licensee shall be eligible to receive Support for the Software during any Support terms for which Licensee has subscribed to Support.

**3.2 Other Services.** Licensee may contract separately with RapidMiner to provide consulting, training, or other forms of professional services.

### **4. Confidential Information.**

**4.1 Ownership.** During the performance of this Agreement, Licensee will have access to certain Confidential Information of RapidMiner or Confidential Information of third parties that RapidMiner is required to maintain as confidential. All items of Confidential Information are proprietary to RapidMiner, and shall remain the sole property of RapidMiner.

**4.2 Confidentiality Obligations.** Licensee agrees (i) to use the Confidential Information only for the purposes described herein; (ii) that it will not reproduce the Confidential Information other than as permitted herein and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party other than in accordance with clause "(iv)" below; (iii) that it will not create any derivative work from Confidential Information in violation of this Agreement or RapidMiner's copyrights; (iv) to restrict access to the Confidential Information to such of Licensee's personnel, agents, and/or consultants and contractors, if any, who have a need to have access and who have been advised of the obligation of confidentiality and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information in its possession upon termination or expiration of this Agreement.

## 5. Warranties.

THE SOFTWARE IS PROVIDED AS-IS AND WHERE-IS. RAPIDMINER MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SOFTWARE, THE SERVICES OR THIS AGREEMENT, AND RAPIDMINER HEREBY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INFORMATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT RAPIDMINER KNOWS OR HAS REASON TO KNOW OF SUCH PURPOSE), WHETHER ARISING BY LAW, CUSTOM, USAGE IN THE TRADE OR BY COURSE OF DEALING. RAPIDMINER SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. IN ADDITION, RAPIDMINER EXPRESSLY DISCLAIMS ANY WARRANTIES TO ANY PERSON OTHER THAN LICENSEE.

## 6. Indemnity.

Licensee shall indemnify and hold harmless RapidMiner and its officers, directors, employees, agents, representatives, subsidiaries and affiliates, from and against any and all claims, demands, damages, liabilities, losses and expenses (including without limitation all attorneys fees, costs and expenses) of any kind whatsoever, arising directly or indirectly out of any representation, action or omission by Licensee that is inconsistent with the terms of this Agreement.

## 7. Limitation of Liability.

**7.1 Maximum Liability.** RapidMiner's cumulative liability, whether in contract, tort, or otherwise, arising out of or in connection with the Software, the Services or this Agreement, shall not exceed the amount of any fees paid to RapidMiner by Licensee pursuant to this Agreement during the twelve (12) months preceding such claim.

**7.2 Exclusion of Non-Direct Damages.** IN NO EVENT SHALL RAPIDMINER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR TORT DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, THE SERVICES OR THIS AGREEMENT, WHETHER OR NOT RAPIDMINER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.3 Timely Claims.** No action arising out of or in connection with the Software, the Services or this Agreement, regardless of form, may be brought by Licensee more than one (1) year after the occurrence of the events which gave rise to the cause of action.

**7.4 Extensions.** In no event shall RapidMiner have any liability, whether in contract, tort, warranty or otherwise, for any claims, demands, damages, liabilities, losses and

expenses of any kind whatsoever, resulting directly or indirectly from Licensee's use of any Third Party Extension.

**7.5 Third-Party Liability.** Portions of the Software may be derived from or incorporate third-party software and no such third party warrants the Software, assumes any liability in connection with the Software or undertakes to furnish any support or information relating to the Software. All such third parties are intended third-party beneficiaries of this Agreement.

**7.6 General.** The limitations contained in this Section 7 shall survive the termination of this Agreement and apply notwithstanding any failure of essential purpose or any invalidity of the limited remedies provided for in this Agreement.

## 8. Term and Termination.

**8.1 Term.** The term of this Agreement shall commence on the Effective Date and shall, unless earlier terminated as contemplated below, continue in force and effect for the duration of the License Term.

**8.2 Termination.** At any time during the term of this Agreement, each party shall have the right to terminate this Agreement immediately and without further obligation or liability hereunder if the other party breaches any material term of this Agreement and fails to remedy such breach within thirty (30) days after written notice by the non-breaching party of such breach.

**8.3 Rights and Obligations Upon Termination.** Upon expiration or termination of this Agreement, all rights granted to Licensee hereunder shall cease and Licensee shall promptly purge all copies of the Software or any portion thereof from all machines and/or other computer storage devices or media on which Licensee has placed such Software. The provisions of Sections 2.4, 4, 6, 7, 8 and 9 of this Agreement shall survive any termination or expiration of this Agreement.

## 9. General.

**9.1 Entire Agreement.** This Agreement and the applicable Order sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes and merges all prior oral and written agreements, discussions and understandings between the parties with respect to the subject matter hereof, and neither of the parties shall be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement; provided, however, that this Agreement shall not supersede the terms of any signed license agreement between Licensee and RapidMiner relating to the Software (a "Signed Agreement"). In the event of any conflict between this Agreement and a Signed Agreement, the terms of the Signed Agreement shall prevail. In the event of any conflict between this Agreement and an Order, the terms of the Order shall prevail.

**9.2 Government End-Users.** Each of the components that constitute Software and its related documentation is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the components of Software and any documentation provided with Software with only those rights set forth in this Agreement.

**9.3 Privacy Policy.** Licensee acknowledges and agrees that the Software may collect certain usage statistics and other information concerning Licensee’s use of the Software. Any such information shall be subject to RapidMiner’s then-current privacy policy, available at <https://rapidminer.com/privacy-policy/>.

**9.4 Audit.** From time to time during the term of this Agreement, RapidMiner or its designated agent (the “Auditor”) may perform a review and audit of Licensee’s compliance with this Agreement, including without limitation whether Licensee’s use of the Software is in compliance with any applicable Field of Use restrictions (the “Audit”). The Auditor shall comply with all reasonable confidentiality and security requirements that Licensee may impose upon the Audit. Without limiting any other rights or remedies that RapidMiner may have, in the event that the Audit discloses any material non-compliance with the terms of this Agreement, Licensee shall pay RapidMiner (a) the reasonable fees, costs and expenses incurred by RapidMiner in connection with the Audit and (b) one hundred and fifty percent (150%) of the amount of any fees that were due from Licensee but not paid.

**9.5 Compliance with Laws.** Licensee shall comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority, in connection with this Agreement, including without limitation, compliance with all export control laws and regulations of the United States and the European Union. Licensee shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

**9.6 Independent Contractors.** The parties to this Agreement are independent parties and nothing herein shall be construed as creating an employment relationship between the parties. Neither party is an agent or representative of the other party and neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or otherwise bind, the other party. The Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon either party.

**9.7 Notices.** All notices under this Agreement will be in writing, and will be deemed given when personally delivered, when sent by confirmed fax, prepaid certified or registered U.S. mail, return receipt requested, or a recognized delivery service to the address of the party to the address set forth above, or to such other address as such party last provided to the other by written notice.

**9.8 Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both parties.

**9.9 Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns. Licensee may not assign this Agreement without the prior written consent of RapidMiner. RapidMiner may assign any of its rights or delegate any of its duties under this Agreement to any person or entity.

**9.10 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

**9.11 Waiver.** No waiver of any provision of this Agreement, or any rights or obligations of either party under this Agreement, shall be effective, except pursuant to a written instrument signed by the party or parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either party to require the performance of any term of this Agreement or the waiver of either party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other party hereto.

**9.12 Governing Law.** The laws of the Commonwealth of Massachusetts shall govern this Agreement, without giving effect to applicable conflict of laws provisions or to the United Nations Convention on Contracts for the International Sale of Goods.

**9.13 Jurisdiction.** The parties agree that the jurisdiction and venue of any action with respect to this Agreement shall be in a court of competent subject matter jurisdiction located in the Commonwealth of Massachusetts, and each of the parties hereby agrees to submit itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action.

**9.14 Equitable Relief.** The covenants of Licensee in Section 2 and Section 4 hereof are of a special and unique character, and Licensee acknowledges that money damages

alone will not reasonably or adequately compensate RapidMiner for any breach of such covenants. Therefore, RapidMiner and Licensee expressly agree that in the event of the breach or threatened breach of any such covenants, in addition to other rights or remedies which RapidMiner may have, at law, in equity, or otherwise, RapidMiner shall be entitled to injunctive or other equitable relief compelling specific performance of, and other compliance with, the terms of such Sections.

**9.15 Force Majeure.** RapidMiner shall not be liable for any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, war, riot, civil disturbance, acts of any civil or military authority, judicial action, terrorist act, fire, flood, earthquake, strike, delays in transportation, unavailability or shortages of labor, materials or equipment, failure or delays in delivery of vendors and suppliers, interruption or failure of telecommunication or digital transmission links, Internet disruptions, common carrier interruptions, breakdown in facilities, power failure or other accidents or unforeseen circumstances. The obligations and rights so excused shall be extended on a day to day basis for the period of time equal to that of the underlying cause of the delay.

**9.16 Remedies.** No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available at law, in equity or otherwise.

**9.17 Construction.** The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms. Both parties acknowledge that they have been represented by counsel in the negotiation of this Agreement, and hereby waive any canon of construction that would require any portion of this Agreement to be construed against the drafter thereof.

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\*\*\* YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. \*\*\*